

RECOMMENDED MICHIGAN STANDARDS FOR IMPOSING LAWYER SANCTIONS

By: Donald D. Campbell

Preface

These Michigan Standards for Imposing Lawyer Sanctions were adopted by the Michigan Supreme Court on [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. These standards may be amended or modified only by the Court.

Preface

These Michigan Standards for Imposing Lawyer Sanctions were adopted by the State of Michigan Attorney Discipline Board (ADB or Board) on [date] under the authority granted by the Michigan Supreme Court in its order dated [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. Pursuant to the Court's order, these standards may be amended by the Board from time to time. The Court may at any time modify these standards or direct the Board to modify them.

Comment

I submit that the Court should adopt and amend the Michigan Standards for Imposing Lawyer Sanctions. The ADB's proposal would empower the ADB to adopt and amend the Standards. It is unprecedented for a state's disciplinary tribunal to be given such authority and responsibility. In the jurisdictions that have adopted some form of standards, the process has been either through the Court or, in rare circumstances, the state bar association's governing body.

Definitions

The relevant definitions applicable to these standards are contained in Michigan Rules of Professional Conduct (MRPC) 1.0.

"Suspension", as that term is used in these Standards, is defined under Standard 2.3 below.

Definitions

"Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury.

"Intent" is the conscious objective or purpose to accomplish a particular result.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

"Negligence" is the failure of a lawyer to exercise the degree of care that a reasonable lawyer would exercise in the situation.

"Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct. The likelihood and gravity of the potential injury are factors to be considered in deciding the level of discipline.

Comment

My recommendation omits the definitions suggested by the ADB. Those definitions at times contradict the definitions provided in the MRPC and are generally unhelpful. Notably, the definitions of "injury" and "potential injury", in the ADB's proposed Standards, are without value.

The definitions for "intent" and "knowledge" in the ADB's proposed Standards cannot be squared with the definitions of "knowingly", "known", or "knows" in MRPC 1.0. Adding to the confusion, the ADB uses the word "knowingly" dozens of times without an express definition of the term, but does not use the word "knowledge" in the proposed Standards, except to define it.

Finally, the ADB's distinction between the terms "intent" and "knowledge" is not consistent with the approach taken by the MRPC. The term "intent" is not used at all in the MRPC, instead the MRPC adopted "knowingly", "known", or "knows" to mean "actual knowledge of the fact in question." MRPC 1.0 adds, "A person's knowledge may be inferred from circumstances."

A. PURPOSE AND NATURE OF SANCTIONS

1.1 Purpose of Lawyer Discipline Proceedings

Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession.

1.1 Purpose of Lawyer Discipline Proceedings

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

Comment

My recommended language is taken verbatim from MCR 9.105 and is more appropriate than the language proposed by the ADB.

1.2 [Reserved]

1.2 Public Nature of Lawyer Discipline

Ultimate disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.

Comment

My recommendation omits the ADB proposed Standard 1.2.

It is worth noting that the ADB's proposed Standard does not address whether the sanction of "no discipline" should be public. The Court approved, in limited circumstances, the imposition of an "Order of Discipline Imposing No Discipline" in *Grievance Administrator v Deutch*, 455 Mich 149 (1997). The ADB has defined "no discipline" as "a public declaration that the lawyer's conduct was improper but does not limit the lawyer's right to practice law." *Grievance Administrator v Ralph Musilli*, 98-216-GA (ADB 2000). If the Court wishes to adopt a Standard 1.2, it should be amended to include "no discipline" matters among the types of cases where the disposition should be public.

1.3 Purpose of These Standards

These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(J)(1). These Standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed upon a lawyer.

1.3 Purpose of These Standards

These standards are designed for use in imposing a sanction or sanctions following a determination by a preponderance of the evidence or acknowledgment that a member of the legal profession has violated a provision of the Michigan Rules of Professional Conduct or subchapter 9.100 of the Michigan Court Rules. Descriptions in these standards of substantive disciplinary offenses are not intended to create independent grounds for determining culpability. These Standards are designed to permit flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct while also promoting: (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and, (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses.

Comment

Standards should promote consistency in discipline, produce reasoned decisions, and facilitate appellate review. *Grievance Administrator v Lopatin*, 462 Mich 238, at 238 and 239 (2000). The ADB proposal calls for "flexibility and creativity" in divining sanctions. I believe that it is a fair criticism to note that ADB decisions have, all too often, employed arbitrary notions of discipline and outright caprice in the imposition of sanctions.

Michigan's disciplinary system does not need "flexibility and creativity" it needs a set of principles and guidelines that will ensure that sanctions are fair for the offending lawyer, consistent with discipline imposed upon other lawyers who committed similar offenses, and will provide predictability for both the parties and the appellate bodies. My recommended language sets forth these principles.

B. SANCTIONS AND OTHER CONSEQUENCES FOR MISCONDUCT

2.1 Scope

A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.

Comment

This provision is unchanged from that language proposed by the ADB.

2.2 Disbarment

Disbarment means revocation of the license to practice law. An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124 but may not do so until at least 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.

2.2 Disbarment

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Comment

I recommend adoption of the language "at least" since a lawyer who is incarcerated during a term of disbarment must wait longer than 5 years before seeking reinstatement. See *Grievance Administrator v McWhorter*, 449 Mich 130 (1995).

2.3 Suspension

Suspension, as that term is used in these Standards, means the loss of the privilege to practice law for a term of no less than 180 days and until the lawyer is reinstated under MCR 9.124.

2.3 Suspension

Suspension is the removal of a lawyer from the practice of law for not less than 30 days. See MCR 9.106(2). An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.

Comment

Nearly all disputes concerning sanctions in disciplinary cases fall into three basic categories:

- 1) Respondent wants a reprimand while the Grievance Administrator wants a short suspension;
- 2) Respondent wants a short suspension while the Grievance Administrator wants the Respondent to go through reinstatement (i.e. a suspension of 180 days or more); and,
- 3) Respondent wants to avoid disbarment while the Grievance Administrator wants disbarment as a sanction.

My recommended Standard provides a context for resolving each of those disputes. The ADB's proposed Standard offers no guide for predicting or reviewing a result in a case where the parties agree some suspension is appropriate but cannot agree on whether reinstatement is appropriate. There is no rationale suggested by the ADB on how the parties or a hearing panel, or even the Board itself should distinguish between a suspension beginning at 30 days and one that would run for 180 days, or for that matter even one that would run for 3 years.

2.4 Interim Suspension

Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes:

- (a) automatic suspension upon conviction of a felony (MCR 9.120(B)) or,
- (b) suspension of a lawyer who fails to comply with the lawful order of a hearing panel, the Board or the Supreme Court (MCR 9.127(A)).

2.5 Reprimand

Reprimand is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

2.6 [Reserved]

2.7 Probation

Probation is a sanction which may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).

2.8 Other Sanctions and Remedies

Other sanctions and remedies which may be imposed include:

- (a) restitution;
- (b) transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121(A)&(B))¹; or
- (c) such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions.

2.9 Reciprocal Discipline

Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate. MCR 9.104(B).

Comment

These provisions are unchanged from the language proposed by the ADB.

C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

¹ An attorney may be ordered transferred to inactive status under MCR 9.121(A) and (B) without a finding of misconduct.

3.0 Generally

In imposing a sanction after a finding or acknowledgment of lawyer misconduct, the Board and hearing panels should consider the following factors:

- (a) the nature of the misconduct;
- (b) the lawyer's mental state; and,
- (c) the existence of relevant aggravating or mitigating factors.

3.0 Generally

In imposing a sanction after a finding or acknowledgment of lawyer misconduct, the Board and hearing panels should consider the following factors:

- (a) the nature of the misconduct;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct;
- (d) the circumstances of the misconduct, including the existence of aggravating or mitigating factors; and
- (e) precedent of the Court and the Board.

Comment

My recommendation omits the ADB's proposal that "injury" be considered a factor at this stage. "Injury" or harm is a factor better suited for consideration during the aggravation/mitigation stage. Also omitted is the ADB's proposal that precedent be considered a factor equal to the other considerations when imposing discipline. As proposed, ADB Standard 3.0(e) would swallow the entire rule. To be blunt, any attempt to improve the disciplinary system to produce reasoned decisions, fairly arrived at, in a reviewable format would be greatly jeopardized if the ADB's Standard 3.0(e) were to be adopted.

3.1 Application of Standards

In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:

- (a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;
- (b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;
- (a) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline; and,
- (a) consider aggravating and mitigating factors (see Section E).

3.1 Application of Standards

In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:

- (a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;
- (b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;
- (a) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline;
- (a) refer to the commentary and precedent to refine the recommendation; and,
- (a) consider aggravating and mitigating factors (see Section E).

Comment

My recommendation omits ADB proposed Standard 3.1(d) because it would undermine the purposes for establishing fair, consistent, and reviewable Michigan Standards for Imposing Lawyer Sanctions. ADB Standard 3.1(d) would have the practical effect of allowing hearing panels and the ADB to afford prior case law much greater weight than the Standards.

D. RECOMMENDED SANCTIONS

The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.

Comment

This provision is unchanged from that language proposed by the ADB.

4.0 Violations of Duties Owed to Clients

4.1 Failure to Preserve Property held in Trust

The following sanctions are generally appropriate in cases involving the failure to preserve property held in trust in violation of MRPC 1.15:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly fails to preserve property held in trust.
- 4.12 Suspension is generally appropriate when a lawyer fails to hold property in trust or commingles personal property with property that should have been held in trust.
- 4.13 Reprimand is generally appropriate when a lawyer, in an isolated instance, negligently fails to preserve property in trust.

4.1 Failure to Preserve the Client's Property

The following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property.
- 4.12 Suspension is generally appropriate when a lawyer knowingly or negligently deals improperly with client property.
- 4.13 Reprimand is generally appropriate when a lawyer engages in an isolated instance of simple negligence in dealing with client property and causes little or no injury or potential injury to a client.

Comment

The ADB proposal treats the property held in trust under two Standards, 4.1 (for client property) and 5.1 (for property of third persons). However, MRPC 1.15(a), the applicable rule under both circumstances, makes no such distinction. It treats a lawyer's fiduciary duty towards property held in trust the same whether or not an lawyer/client relationship exists.

I recommend that a violation of MRPC 1.15(a) be treated under a single Standard.

I recommend that "fails to preserve" be used in place of the ADB proposed "converts" because it is more consistent with the language of MRPC 1.15.

In 4.12, my recommendation is to replace the nebulous "knowingly deals" with the more limited and much more specific language concerning negligent misappropriation and commingling. The ADB's proposed language appears to create alternative sanctions for the same offense. That is, "knowingly converts" in the Board's 4.11 and "knowingly deals improperly" in the Board 4.12 appear to be distinctions without a difference.

The language I have recommended will ensure that all lawyers who knowingly fail to preserve monies and other property in trust will be treated in a manner much more consistent than has historically occurred and much more fairly than the manner proposed by the ADB.

4.2 Failure to Preserve the Client's Confidences and Secrets

The following sanctions are generally appropriate in cases involving improper revelation of information in violation of MRPC 1.6 and 1.9(c):

- 4.21 Disbarment is generally appropriate when a lawyer, in a scheme to benefit the lawyer or another, knowingly reveals information protected under MRPC 1.6 and 1.9(c).
- 4.22 Suspension is generally appropriate when a lawyer knowingly reveals information protected under MRPC 1.6 and 1.9(c), where the revelation is not part of a scheme to benefit the lawyer or another.
- 4.23 Reprimand is generally appropriate when a lawyer fails to use reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client.

4.2 Failure to Preserve the Client's Confidences

The following sanctions are generally appropriate in cases involving improper revelation of information relating to representation of a client:

- 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
- 4.22 Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
- 4.23 Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.

Comment

The phrase "protected under MRPC 1.6" is recommended to replace the ADB's proposed wording primarily because "relating to the representation" suggests a limitation on what MRPC 1.6 actually protects. Unlike the ABA Model Rules for Professional Conduct², MRPC 1.6 protects confidences and "secrets".

The ADB's proposed Standard 4.23 criminalizes conduct that does not violate the MRPC. Specifically, MRPC 1.6(b) prohibits a lawyer from "knowingly" revealing a confidence or secret. Yet, the ADB proposed Standard defines "negligent" disclosure as sanctionable. There is simply no basis under MRPC 1.6 to suggest that negligent revelation of information can be sanctioned.

My recommended language for Standard 4.23 covers MRPC 1.6(d) which has been ignored by the ADB's proposed Standards.

Again, I note that the ADB's use of "knowingly" and "intent" above is both conflicting and confusing, given the definitions previously set forth in the ADB's proposed Standards.

²As noted previously, the ADB's proposal is drawn largely from the ABA Standards for Imposing Lawyer Sanctions. ABA Model Rule 1.6 is one example of where the ABA Standard that was created address a Model Rule substantially different from the MRPC, yet the ADB makes no allowance for this fact and simply parrots the language of the ABA Standard rather.

4.3 Failure to Avoid Conflicts of Interest

The following sanctions are generally appropriate in cases involving conflicts of interest in violation of MRPC 1.7; 1.8; 1.9(a) and (b); 1.10; 1.11; 1.12; 1.13; 5.4(c); and, 6.3.

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of the client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's to obtain a benefit or advantage for the lawyer or another; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests to obtain a benefit or advantage for the lawyer or another; or,
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client to obtain a benefit or advantage for the lawyer or another; or,
- (d) engages in a transaction described in MRPC 1.8(a) with a client where in the lawyer deceives the client into believing the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client, when the lawyer knows the transaction and terms are unfair and unreasonable.

4.32 Suspension is generally appropriate when:

- (a) a lawyer knows of a conflict of interest and does not seek to obtain consent from the present or former client after consultation; or
- (b) a lawyer knowingly violates MRPC 1.8(c)-(j).

4.33 Reprimand is generally appropriate when a lawyer engages in a conflict of interest in violation of MRPC 1.7, 1.8 and/or 1.9(a) and (b), but did not knowingly violate the rule(s).

Comment

While the ADB's proposed Standard suggests that violations of MRPC 1.8 should be addressed in Standard 4.3 (see ADB's Appendix 1), there is no language applicable to a violation of MRPC 1.8(a) - (j) in the ADB's proposed Standard 4.3. My recommended language in Standards 4.31(d), 4.32(b) and 4.33 address those rules.

The changes to 4.33 are suggested because the language of MRPC 1.7, 1.8 and 1.9 create strict liability offenses. The ADB's proposed Standard is awkwardly worded and does not adequately address the strict liability aspect of the rules. I believe that, on the whole, the recommended Standard is much more consistent with the MRPC than the ADB's proposed language.

4.4 Lack of Diligence

The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c); 1.2(a) and (b); 1.3; and, 1.4:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice of law; or
- (b) a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client in a reasonably diligent and prompt manner;
- (b) a lawyer engages in a pattern of neglect; or,
- (c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or handles a matter without preparation adequate in the circumstances.

4.4 Lack of Diligence

The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice of law and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Comment

As noted previously, the issue of injury has been omitted as a factor for determining the base disciplinary sanction and is treated as a factor to be considered in modifying the sanction under Standards 9.22(e) and 9.32(e), I believe that such a treatment is more consistent with MCR 9.115(J)(3), than is the ADB's proposal to include the degree of injury as an element of the disciplinary offense.

ADB Standards 4.4 and 4.5 have been combined consistent with MRPC 1.1; 1.2; and 1.3. The recommended Standard incorporates concepts and language from MRPC 1.1(a)-(c) which are absent from the ADB proposed Standard, a Standard that was influenced by the much more narrow ABA Model Rule 1.1. (See footnote 2 above).

4.5 Charging Illegal or Clearly Excessive Fees

The following sanctions are generally appropriate in cases involving the charging of an illegal or clearly excessive fee in violation of MRPC 1.5:

- 4.51 Disbarment is not generally appropriate when a lawyer charges or collects a clearly excessive fee absent the presence of significant factors in aggravation.
- 4.52 Suspension is generally appropriate when a lawyer knowingly charges or collects a clearly excessive fee.
- 4.53 Reprimand is generally appropriate when a lawyer negligently charges or collects a clearly excessive fee.

4.5 Lack of Competence

The following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:

- 4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.
- 4.52 Suspension is generally appropriate when a lawyer knowingly fails to provide competent representation, and causes injury or potential injury to a client.
- 4.53 Reprimand is generally appropriate when a lawyer:
 - (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
 - (b) negligently fails to provide competent representation and causes injury or potential injury to a client.

Comment

My recommended Standard 4.5 is new. I recommend that MRPC 1.5 be treated under Standard 4.5. The ADB treats MRPC 1.5 under Standard 7.0, along with the rules concerned with duties to the public, such as prohibitions against personal solicitation of cases and the unauthorized practice of law. The ADB also treats 1.5 under Standard 4.6.

I have not found any case law supporting a sanction of disbarment for charging a clearly excessive fee, alone.

Theft of client monies and illegal conduct with regard to fees are treated under the my proposed Standards 4.11 and 5.11, respectively.

I have combined the notions from ADB's Standards 4.4 and 4.5 to create the my recommended Standard 4.4. The concepts separated by the ADB are naturally combined, as they flow from the same rule, MRPC 1.1(a)-(c). The manners of violating MRPC 1.1(a)-(c), should be joined under a single recommended Standard 4.4 and not bifurcated as suggested by the ADB.

4.6 Lack of Candor

The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of MCR 9.104(A)(2) and (3) and MRPC 8.4(b).

- 4.61 Disbarment is generally appropriate when a lawyer deceives a client to obtain a benefit or advantage for the lawyer or another.
- 4.62 Suspension is generally appropriate when a lawyer deceives a client, and the deception reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, but is not done to obtain a benefit or advantage for the lawyer or another.
- 4.63 Reprimand is generally not appropriate when a lawyer engages in fraud, deceit or misrepresentation toward a client.

4.6 Lack of Candor

The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
- 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

Comment

My recommended Standard 4.61 omits the confusing and extraneous language concerning "knowingly" and "intent" contained in the ADB's proposed Standard. It is axiomatic that deceit requires "knowledge" on the part of the deceiver.

My recommended 4.62 brings the Standard in line with the language of the MRPC 8.4(b) and MCR 9.104(A) (2) and (3).

The ADB's proposed Standard 4.63 criminalizes conduct which is not prohibited or, frankly, even logical under the MRPC (or even the ABA Model Rules for that matter). The only reasonable explanation for the ADB's proposed Standard 4.63 is their devotion to a tiered format for each Standard. Only conduct which is done "knowingly" is prohibited by any of the rules cited in the ADB's proposed Appendix 1.

5.0 Violations of Duties Owed to the Public

5.1 Failure to Maintain Personal Integrity

The following sanctions are generally appropriate in cases involving conduct in violation of MCR 9.104(A)(5) and MRPC 3.5(c); 4.1; 6.5; and, 8.4(b).

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice; or,
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic in order to gain an advantage in the litigation for the lawyer or another; or
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal in order to gain an advantage in the litigation for the lawyer or another.

5.12 Suspension is generally appropriate when:

- (a) a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11 but which nevertheless adversely reflects on the lawyer's fitness to practice; or
- (b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice; or,
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic without the purpose of gaining an advantage in the litigation for the lawyer or another; or,
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal without the purpose of gaining an advantage in the litigation for the lawyer or another.

5.13 Reprimand is generally appropriate when a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11.

5.0 Violations of Duties Owed to the Public

5.1 Failure to Maintain Personal Integrity

The following sanctions are generally appropriate: (a) in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; (b) in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation; or (c) in cases involving the improper handling of property entrusted to a lawyer.

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice; or
 - (c) a lawyer knowingly converts the property of another entrusted to the lawyer.
- 5.12 Suspension is generally appropriate when:
 - (a) a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 but which nevertheless seriously adversely reflects on the lawyer's fitness to practice; or
 - (b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or knowing misrepresentation that reflects adversely on the lawyer's fitness to practice; or
 - (c) a lawyer knowingly or negligently deals improperly with the property of another entrusted to the lawyer.
- 5.13 Reprimand is generally appropriate when:
 - (a) a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that reflects adversely on the lawyer's fitness to practice; or
 - (b) a lawyer engages in any conduct that involves dishonesty, fraud, deceit, or knowing misrepresentation and that adversely reflects on the lawyer's fitness to practice law to a slight degree; or
 - (c) a lawyer engages in an isolated instance of simple negligence in dealing with the property of another entrusted to the lawyer and causes little or no injury or potential injury.

Comment

My recommended Standard omits the theft of property held in trust for third persons, a violation of MRPC 1.15(a), since those matters are dealt with under my recommended Standard 4.1.

The ADB's suggestion that "to a slight degree" should become a guideline for imposing discipline is omitted. The "fitness" qualification is also eliminated for misconduct which falls under Standard 5.12(a). This recommendation brings the Standard in line with MCR 9.104(A)(5) and *Grievance Administrator v Deutch*, 455 Mich 149, (1997). In *Deutch*, the respondent received a reprimand for Operating a Motor Vehicle Under the Influence of Intoxicating Liquor. By eliminating the "fitness" language it is made clear that a criminal violation is presumed to be sanctionable.

Also, language is added to include violations of MRPC 3.5(c) and 6.5(a). The ADB's proposed Standards do not provide any guidelines for either MRPC 3.5(c) and 6.5(a).

5.2 Failure to Maintain the Public Trust

The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of MCR 9.104(1); MRPC 3.8; 6.4; and, 8.4(c) and (d).

- 5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position or either states or implies that the lawyer may improperly influence another in an official or governmental position to obtain a benefit or advantage for the lawyer or another.
- 5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules which results in prejudice to the administration of justice.
- 5.23 Reprimand is generally appropriate when:
 - (a) a lawyer in an official or governmental position negligently fails to follow proper procedures or rules_(with the exception of the duties set forth in MRPC 6.4 which cannot be violated by simple negligence) which results in prejudice to the administration of justice; or,
 - (b) a prosecutor or assistant prosecutor violates the duties set forth in MRPC 3.8(a)-(e) and the violation does not result in prejudice to the administration of justice.

5.2 Failure to Maintain the Public Trust

The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

- 5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a part or to the integrity of the legal process.
- 5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
- 5.23 Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

Comment

My recommended Standard incorporates MRPC 8.4(d), which was treated under the ADB's proposed Standard 7.0. I believe that the offer to indirectly influence should be treated consistent with the offer to directly influence the administration of justice. The language of the MRPC is also incorporated in my recommended Standard, i.e. "prejudicial to the administration of justice". Also the changes clarify how the violations of either MRPC 3.8 or 6.4 should be treated. MRPC 6.4 requires that the lawyer have knowledge, an element not required for a violations of MCR 9.104(A)(1), MCR 3.8 (a)-(e), and MCR 8.4(c). The ADB's proposed Standard 5.23 criminalizes a negligent violation of MRPC 6.4, which is inappropriate.

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation to a Tribunal

The following sanctions are generally appropriate in cases involving conduct that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal in violation of MRPC 3.3

- 6.11 Disbarment is generally appropriate when a lawyer knowingly makes a false statement, submits a false document, or improperly fails to disclose a material fact or adverse controlling authority known to the lawyer and not disclosed by opposing counsel to obtain a benefit or advantage for the lawyer or another.
- 6.12 Suspension is generally appropriate when:
 - (a) a lawyer engages in the conduct described in Standard 6.11 but does not do so to obtain a benefit or advantage for the lawyer or another; or,
 - (b) a lawyer comes to know of the falsity of material evidence the lawyer has offered to a tribunal but fails to take reasonable remedial measures.
- 6.13 Reprimand is generally not appropriate when a lawyer engages in false statements, fraud, and misrepresentation to a tribunal.

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation to a Tribunal

The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal:

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the tribunal, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the tribunal or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury.
- 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents submitted to a tribunal are false or in taking remedial action when material information is being withheld and causes injury or potential injury.

Comment

The word "knowingly", which is ubiquitous in Standards, is curiously absent from the Standard which addresses MRPC 3.3, which prohibits conduct which is done "knowingly". See MRPC 3.3(a). Likewise the "benefit" language employed by the ADB in preceding disbarment sections is absent from this section where, in my opinion, it is well suited.

My recommended Standard 6.11 is consistent with the language of concepts of MRPC 3.3.

My Standard 6.12 covers violations addressed in MRPC 3.3(a)(1)-(4). The ADB's recommended Standard 6.12 fails to provide any guidance concerning a violation of 3.3(a)(2)-(4) and no guidance concerning a lawyer's discovery, subsequent to the event, that false material evidence was submitted to the tribunal.

Standard 6.13 as recommended by the ADB criminalizes conduct which does not violate the MRPC. My recommended Standard provides that conduct prohibited by MRPC 3.3, absent compelling evidence in mitigation, should not result in a mere reprimand.

6.2 Abuse of the Legal Process

The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists in violation of MCR 9.104(A)(1) MRPC 3.1; 3.2; 3.4; 3.6; 4.4; and, 8.4(c).

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule to obtain a benefit or advantage for the lawyer or another, and MRPC 3.4(a) and (b).

6.22 Suspension is generally appropriate when:

- (a) a lawyer knowingly violates a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another but which results in prejudice to the administration of justice; or,
- (b) a lawyer knowingly brings or defends a matter without a basis which is not frivolous; or,
- (c) a lawyer knowingly fails to expedite litigation consistent with the interests of the client.

6.23 Reprimand is generally appropriate when:

- (a) a lawyer violates MRPC 3.4(d)-(f) or 3.6; or,
- (b) a lawyer negligently brings or defends a matter without a basis which is not frivolous; or,
- (c) a lawyer negligently fails to expedite litigation consistent with the interests of the client.

6.2 Abuse of the Legal Process

The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

Comment

I recommend that the Standard incorporate MCR 9.104(A)(1) and MRPC 8.4(c), which the ADB's proposed Standards treat under Standard 6.1. I believe that the issue of prejudice to the administration of justice is better considered with the issues of meritorious filings (MRPC 3.1), expedience (MRPC 3.2), and violation of court orders (MRPC 3.4) rather than with issues of deceit and misrepresentation (See MRPC 3.3).

Again, the ADB's proposed Standard 6.23 criminalizes conduct that does not violate any MRPC. The ADB proposed Standard would sanction "negligent" failure to obey a court rule, however, MRPC 3.4(c) prohibits only "knowing" failures to obey.

6.3 Improper Communications with Individuals In the Legal System

The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law or violates MRPC 3.5(b) and (c); 4.2; and, 4.3:

6.31 Disbarment is generally appropriate when a lawyer:

- (a) intentionally tampers with a witness in an attempt to interfere with the outcome of the legal proceeding; or,
- (b) makes an *ex parte* communication with a judge or juror in an attempt to affect the outcome of the proceeding; or,
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror in an attempt to influence or affect the outcome of the proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system.

6.3 Improper Communications with Individuals In the Legal System

The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law:

6.31 Disbarment is generally appropriate when a lawyer:

- (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- (b) makes an *ex parte* communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

Comment

The ADB proposed Standards Appendix 1 indicates that violations of "MRPC 3.5" should be treated under this Standard. In fact, only 3.5(a) and (b) are treated under the Standard. MRPC 3.5(c) is not treated at all under the ADB's proposed Standards. I recommend that violations of MRPC 3.5(c) be treated under Standard 5.1.

7.0 Violations of Other Duties Owed as a Professional

The following sanctions are generally appropriate in cases involving conduct in violation of MRPC 1.14; 1.16; 2.1; 2.3; 5.1 - 5.6; 6.2; 7.1 - 7.5; 8.1; 8.3; and 8.4(e).

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional to obtain a benefit or advantage for the lawyer or another.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional but does not do so in order to obtain a benefit or advantage for the lawyer or another.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional.

7.0 Violations of Other Duties Owed as a Professional

The following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Comment

I recommend that violations of MRPC 1.5 be treated under Standard 4.5 and violations of 8.4(d) be treated under Standard 5.2.

The balance of the Standard is similar to the proposal made by the ADB.

8.0 Practice of Law in Violation of an Order of Discipline

The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.

- 8.1 Disbarment is generally appropriate when a lawyer knowingly practices law in violation of the terms of a disciplinary order.
- 8.2 Generally, the same discipline imposed by the original disciplinary order should be consecutively imposed when a lawyer practices law in violation of the terms of a disciplinary order, but does not engage in such conduct knowingly.
- 8.3 Reprimand is generally not appropriate when a lawyer practices law in violation of the terms of a disciplinary order.

8.0 Practice of Law in Violation of an Order of Discipline

The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.

- 8.1 Disbarment is generally appropriate when a lawyer intentionally practices law in violation of the terms of a disciplinary order.
- 8.2 Suspension is generally appropriate when a lawyer knowingly practices law in violation of the terms of a disciplinary order.
- 8.3 Reprimand is generally appropriate when a lawyer negligently practices law in violation of the terms of a disciplinary order.

Comment

I recommend in Standard 8.2 the ratification of the long standing policy in Michigan, that a violation of a disciplinary order should result in the imposition of a sanction at least equal to that originally imposed.

E. Aggravation and Mitigation

9.1 Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

Comment

This provision is unchanged from that language proposed by the ADB.

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation include:

- (a) prior disciplinary offenses;
- (b) multiple offenses;
- (c) obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency;
- (d) vulnerability of victim;
- (e) degree of harm to a client, opposing party, the bar, bench or public.

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

Comment

It is my opinion that the Standard recommended by the ADB is overburdened with non-essential factors. The process would benefit from an elimination of those factors that are insignificant and redundant. The issue of injury should be removed as an element of a disciplinary offense and reserved for consideration as a factor in aggravation or mitigation. Such a treatment is more consistent with MCR 9.115(J)(3) than is the ADB's proposal. Additionally such a treatment is more compatible with the goals of the disciplinary system.

As noted in the memorandum accompanying these recommendations, I believe that aggravating and mitigating factors should be weighted to reflect the significance of each factor. Also, as noted in the memorandum, I favor the adoption of a set of scaled guidelines drawn specifically to each disciplinary offense.

9.3 Mitigation

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation include:

- (a) serious personal or emotional problems which contributed to the misconduct;
- (b) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (c) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability contributed to the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and,
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (d) delay in disciplinary proceedings
- (e) absence of any degree of harm to a client, opposing party, the bar, bench or public.

9.3 Mitigation

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) serious personal or emotional problems which contributed to the misconduct;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability which contributed to the misconduct;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability contributed to the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse.

Comment

My recommendations reflect the same considerations set forth in the Comment to Standard 9.2.

9.4 Factors Which Are Neither Aggravating nor Mitigating

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the lawyer;
- (d) resignation prior to completion of disciplinary proceedings;
- (e) complainant's recommendation as to sanction;
- (f) failure of injured client to complain.

Comment

This provision is unchanged from that language proposed by the ADB.

APPENDIX 1

Cross-Reference Table: Michigan Rules of Professional Conduct and Recommended Michigan Standards for Imposing Lawyer Sanctions³

<u>Michigan Rules of Professional Conduct</u>	<u>Standards for Imposing Sanctions</u>
Competence/Neglect	
Rule 1.1, 1.1(a) (b) and(c)	Standard 4.4
Scope of Representation	
Rule 1.2(a), (b)	Standard 4.4
Rule 1.2(c)	Standards 5.1, 6.1
Diligence	
Rule 1.3	Standard 4.4
Communication	
Rule 1.4	Standard 4.4
Fees	
Rule 1.5	Standards 4.5, 5.11
Confidentiality of Information	
Rule 1.6	Standard 4.2
Conflict of Interest	
Rule 1.7	Standard 4.3
Prohibited Transactions	
Rule 1.8	Standard 4.3
Former Client	
Rule 1.9(a) and (b)	Standard 4.3
Rule 1.9(c)	Standard 4.2
Imputed Disqualification	
Rule 1.10	Standard 4.3
Successive Government and Private Employment	
Rule 1.11	Standard 4.3
Former Judge or Arbitrator	
Rule 1.12	Standard 4.3
Organization as Client	
Rule 1.13	Standard 4.3

³ This appendix is intended to be the primary reference point for ascertaining which standard is applicable.

Recommended Michigan Standards for Imposing Lawyer Sanctions - Appendix 1

<u>Michigan Rules of Professional Conduct</u>	<u>Standards for Imposing Sanctions</u>
Disabled Client	
Rule 1.14	Standard 7.0
Safekeeping Property	
Rule 1.15(a), (b), (c)	Standard 4.1
Declining or Terminating Representation	
Rule 1.16	Standard 7.0
Advisor	
Rule 2.1	Standard 7.0
Intermediary	
Rule 2.2	Standard 4.3
Evaluation for Use by Third Persons	
Rule 2.3	Standard 7.0
Meritorious Claims and Contentions	
Rule 3.1	Standard 6.2
Expediting Litigation	
Rule 3.2	Standard 6.2
Candor Toward the Tribunal	
Rule 3.3	Standard 6.1
Fairness to Opposing Party and Counsel	
Rule 3.4	Standard 6.2
Impartiality and Decorum	
Rule 3.5(a) and (b)	Standard 6.3
Rule 3.5(c)	Standard 5.1
Trial Publicity	
Rule 3.6	Standard 6.2
Lawyer as Witness	
Rule 3.7	Standard 4.3
Special Responsibilities of a Prosecutor	
Rule 3.8	Standard 5.2
Advocate in Nonadjudicative Proceedings	
Rule 3.9	Standard 6.2
Truthfulness to Others	
Rule 4.1	Standard 5.1
Communication with Represented Persons	
Rule 4.2	Standard 6.3
Dealing with Unrepresented Persons	
Rule 4.3	Standard 6.3
Respect for Rights of Third Persons	
Rule 4.4	Standard 6.2
Responsibilities of a Partner or Supervisory Lawyer	
Rule 5.1	Standard 7.0
Responsibilities of a Subordinate Lawyer	

Rule 5.2

Standard 7.0

Recommended Michigan Standards for Imposing Lawyer Sanctions - Appendix 1

Michigan Rules of
Professional Conduct

Standards for
Imposing Sanctions

Responsibilities Regarding Non-lawyer

Assistants

Rule 5.3

Standard 7.0

Professional Independence of Lawyer

Rule 5.4(a), (b), and (d)

Standard 7.0

Rule 5.4(c)

Standard 4.3

Unauthorized Practice of Law

Rule 5.5

Standard 7.0

Restrictions on Right to Practice

Rule 5.6

Standard 7.0

Pro Bono Public Service

Rule 6.1

No Applicable Standard

Accepting Appointments

Rule 6.2

Standard 7.0

Membership in Legal Services Organization

Rule 6.3

Standard 4.3

Law Reform Activities Affecting Client

Interests

Rule 6.4

Standard 5.2

Professional Conduct

Rule 6.5

Standard 5.1

Communication Concerning Lawyer's Services

Rule 7.1

Standard 7.0

Advertising

Rule 7.2

Standard 7.0

Direct Contact with Prospective Clients

Rule 7.3

Standard 7.0

Communication of Fields of Practice

Rule 7.4

Standard 7.0

Firm Names and Letterheads

Rule 7.5

Standard 7.0

Bar Admission and Disciplinary Matters

Rule 8.1

Standards 5.1, 7.0

Judges and Legal Officials

Rule 8.2

Standard 5.1

Reporting Professional Misconduct

Rule 8.3

Standard 7.0

Misconduct

Rule 8.4(a)

Standards 4.0, 5.0, 6.0, 7.0

Rule 8.4(b); MCR 9.104(A)(2)(3)&(5)

Standards 4.6, 5.1

Rule 8.4(c); MCR 9.104(A)(1)

Standards 5.2, 6.2

Rule 8.4(d)

Standard 5.2

Rule 8.4(e)

Standard 7.0

Jurisdiction

Rule 8.5

None